

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN SENATE JUNE 11, 2012

AMENDED IN SENATE APRIL 9, 2012

AMENDED IN SENATE JUNE 20, 2011

AMENDED IN ASSEMBLY MAY 9, 2011

AMENDED IN ASSEMBLY APRIL 26, 2011

AMENDED IN ASSEMBLY APRIL 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1217**

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**Introduced by Assembly Member Fuentes**

February 18, 2011

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An act to amend Section 7960 of, to amend the heading of Part 7 (commencing with Section 7960) of Division 12 of, and to add Section 7962 to, the Family Code, relating to surrogacy agreements.

### **LEGISLATIVE COUNSEL’S DIGEST**

AB 1217, as amended, Fuentes. Surrogacy agreements.

The Uniform Parentage Act defines the parent and child relationship as the legal relationship existing between a child and the child’s parents, and governs proceedings to establish that relationship. Existing law provides that a party to an assisted reproduction agreement may bring an action under the Uniform Parentage Act at any time to establish a parent and child relationship consistent with the intent expressed in the agreement. Existing law also regulates the practice of surrogacy

facilitators in assisted reproduction agreements, including surrogacy agreements.

~~This bill would require, when executing a surrogacy agreement, a surrogate mother and the intended parent or intended parents to be represented by separate independent counsel of their choosing. Before the surrogate mother could begin medication for assisted reproduction, the bill would require the parties' counsel to review the surrogacy agreement and its ramifications with the surrogate mother and the intended parent or intended parents. The bill would require counsel for each party to the surrogacy agreement to issue a statement to the treating physician that the surrogacy agreement complies with Section 7962 of the Family Code. The bill would require the surrogacy agreement to be executed by the parties and notarized or otherwise witnessed, as specified. The bill would provide specific requirements for where the surrogacy agreement may be filed. The bill would provide that a surrogacy agreement that meets the above requirements would be presumptively valid. The bill would require, upon request by a party to the surrogacy agreement, that the court seal all documents that list the identities of the parties. Because this bill would require the declarations accompanying the surrogacy agreement to be made under penalty of perjury, the bill would expand the class of persons who could be prosecuted for a crime, and thereby impose a state-mandated local program.~~ *prior to executing an assisted reproduction agreement for gestational carriers, as defined. The bill also would require an assisted reproduction agreement for gestational carriers to contain specified information. The bill would require the assisted reproduction agreement for gestational carriers to be executed by the parties and notarized or otherwise witnessed, as specified. The bill would prohibit the parties to an assisted reproduction agreement for gestational carriers from undergoing an embryo transfer procedure or commencing injectable medication for assisted reproduction until the assisted reproduction agreement for gestational carriers has been fully executed pursuant to the requirements of these provisions. The bill would permit an action to establish the parent-child relationship to be filed before the child's birth, and would specify where that action may be filed. The bill would require the parties to the assisted reproduction agreement for gestational carriers to attest, under penalty of perjury, and to the best of their knowledge and belief, as to their compliance with these provisions. By expanding the existing crime of perjury, the bill would impose a state-mandated local program. The bill would provide that*

*an assisted reproduction agreement for gestational carriers executed in accordance with these provisions is presumptively valid. The bill would provide that the assisted reproduction agreement for gestational carriers and related documents are not open to inspection, except by the parties to the proceeding and their attorneys and the State Department of Social Services, except as specified.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The heading of Part 7 (commencing with Section  
2 7960) of Division 12 of the Family Code is amended to read:

3  
4 PART 7. SURROGACY FACILITATORS AND ASSISTED  
5 REPRODUCTION AGREEMENTS FOR GESTATIONAL  
6 CARRIERS  
7

8 SEC. 2. Section 7960 of the Family Code is amended to read:  
9 7960. For purposes of this part, the following terms have the  
10 following meanings:

11 (a) "Assisted reproduction agreement" has the same meaning  
12 as defined in subdivision (b) of Section 7606.

13 (b) "Fund management agreement" means the agreement  
14 between the intended parents and the surrogacy facilitator relating  
15 to the fee or other valuable consideration for services rendered or  
16 that will be rendered by the surrogacy facilitator.

17 (c) "Nonattorney surrogacy facilitator" means a surrogacy  
18 practitioner who is not an attorney in good standing licensed to  
19 practice law in this state.

20 (d) "Surrogacy facilitator" means a person or organization that  
21 engages in either of the following activities:

22 (1) Advertising for the purpose of soliciting parties to an assisted  
23 reproduction agreement or acting as an intermediary between the  
24 parties to an assisted reproduction agreement.

(2) Charging a fee or other valuable consideration for services rendered relating to an assisted reproduction agreement.

(e) “Surrogate” means a woman who bears and carries a child for another through medically assisted reproduction and pursuant to a written agreement, as set forth in Sections 7606 and 7962. *Within the definition of surrogate are two different and distinct types:*

(1) “Traditional surrogate” means a woman who agrees to gestate an embryo, in which the woman is the gamete donor and the embryo was created using the sperm of the intended father or a donor arranged by the intended parent or parents.

(2) “Gestational carrier” means a woman who agrees to gestate an embryo that is genetically unrelated to her on behalf of another person or persons.

SEC. 3. Section 7962 is added to the Family Code, to read:

7962. (a) ~~Prior~~—An assisted reproduction agreement for gestational carriers shall contain, but shall not be limited to, all of the following information:

(1) The date on which the assisted reproduction agreement for gestational carriers was executed.

(2) The persons from which the gametes originated.

(3) The identities of the intended parents.

(b) ~~Prior to executing the written surrogacy agreement assisted reproduction agreement for gestational carriers, a surrogate and the intended parent or intended parents shall be represented by separate independent licensed attorneys of their choosing. After reviewing the parties’ surrogacy agreement and its ramifications with their respective clients, each attorney representing a party to the surrogacy agreement shall issue a written statement to the treating physician in the assisted reproductive undertaking that the agreement was executed in conformity with this section. Providing this written statement shall not constitute a waiver, under Section 912 of the Evidence Code, of the lawyer-client privilege described in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.~~

~~(b)~~

(c) ~~The surrogacy agreement assisted reproduction agreement for gestational carriers shall be executed by the parties and the signatures on the surrogacy agreement assisted reproduction agreement for gestational carriers shall be notarized or witnessed~~

1 by an equivalent method of affirmation as required in the  
2 jurisdiction where the ~~surrogacy agreement~~ *assisted reproduction*  
3 *agreement for gestational carriers* is executed.

4 ~~(e) A surrogate shall not undergo artificial insemination, an~~  
5 ~~embryo transfer procedure, or commence injectable medication in~~  
6 ~~preparation for an embryo transfer or artificial insemination for~~  
7 ~~assisted reproduction purposes until the requirements of~~  
8 ~~subdivisions (a) and (b) are met.~~

9 ~~(d) To request a parent-child relationship, the surrogacy~~  
10 ~~agreement shall be lodged in the superior court where the child is~~  
11 ~~anticipated to be born, the county in which the intended parent or~~  
12 ~~intended parents reside, the county where the surrogate resides, or~~  
13 ~~the county where the surrogacy agreement is executed. The parties~~  
14 ~~shall attest, under penalty of perjury, and to the best of their~~  
15 ~~knowledge and belief, to the surrogacy agreement's compliance~~  
16 ~~with this section. Submitting this declaration shall not constitute~~  
17 ~~a waiver, under Section 912 of the Evidence Code, of the~~  
18 ~~lawyer-client privilege described in Article 3 (commencing with~~  
19 ~~Section 950) of Chapter 4 of Division 8 of the Evidence Code.~~

20 ~~(e) (1) A surrogacy agreement executed in accordance with~~  
21 ~~this section shall rebut any presumptions contained within Part 2~~  
22 ~~(commencing with Section 7540), subdivision (b) of Section 7610,~~  
23 ~~and Sections 7611 and 7613, as to the surrogate, her spouse, or~~  
24 ~~partner being a parent of the child or children.~~

25 ~~(d) The parties to an assisted reproduction agreement for~~  
26 ~~gestational carriers shall not undergo an embryo transfer~~  
27 ~~procedure, or commence injectable medication in preparation for~~  
28 ~~an embryo transfer for assisted reproduction purposes, until the~~  
29 ~~assisted reproduction agreement for gestational carriers has been~~  
30 ~~fully executed as required by subdivisions (b) and (c) of this~~  
31 ~~section.~~

32 ~~(e) An action to establish the parent-child relationship between~~  
33 ~~the intended parent or parents and the child as to a child conceived~~  
34 ~~pursuant to an assisted reproduction agreement for gestational~~  
35 ~~carriers may be filed before the child's birth and may be filed in~~  
36 ~~the county where the child is anticipated to be born, the county~~  
37 ~~where the intended parent or intended parents reside, the county~~  
38 ~~where the surrogate resides, the county where the assisted~~  
39 ~~reproduction agreement for gestational carriers is executed, or~~  
40 ~~the county where medical procedures pursuant to the agreement~~

1 *are to be performed. A copy of the assisted reproduction agreement*  
2 *for gestational carriers shall be lodged in the court action filed*  
3 *for the purpose of establishing the parent-child relationship. The*  
4 *parties to the assisted reproduction agreement for gestational*  
5 *carriers shall attest, under penalty of perjury, and to the best of*  
6 *their knowledge and belief, as to the parties' compliance with this*  
7 *section in entering into the assisted reproduction agreement for*  
8 *gestational carriers. Submitting those declarations shall not*  
9 *constitute a waiver, under Section 912 of the Evidence Code, of*  
10 *the lawyer-client privilege described in Article 3 (commencing*  
11 *with Section 950) of Chapter 4 of Division 8 of the Evidence Code.*

12 *(f) (1) A notarized assisted reproduction agreement for*  
13 *gestational carriers signed by all the parties, with the attached*  
14 *declarations of independent attorneys, and lodged with the superior*  
15 *court in accordance with this section, shall rebut any presumptions*  
16 *contained within Part 2 (commencing with Section 7540),*  
17 *subdivision (b) of Section 7610, and Sections 7611 and 7613, as*  
18 *to the gestational carrier surrogate, her spouse, or partner being*  
19 *a parent of the child or children.*

20 *(2) Upon petition of any party to a properly executed surrogacy*  
21 *agreement, the court shall issue a judgment or order establishing*  
22 *a parent-child relationship, whether pursuant to Section 7630 or*  
23 *otherwise. The judgment or order may be issued before or after*  
24 *the child's or children's birth subject to the limitations of Section*  
25 *7633. Subject to proof of compliance with this section, the*  
26 *judgment or order shall establish the parent-child relationship of*  
27 *the intended parent or intended parents identified in the surrogacy*  
28 *agreement and shall establish that the surrogate, her spouse, or*  
29 *partner is not a parent of, and has no parental rights or duties with*  
30 *respect to, the child or children. The judgment or order shall*  
31 *terminate any parental rights of the surrogate and her spouse or*  
32 *partner without further hearing or evidence, unless the court or a*  
33 *party to the ~~surrogacy agreement~~ assisted reproduction agreement*  
34 *for gestational carriers has a good faith, reasonable belief that the*  
35 *~~surrogacy agreement~~ assisted reproduction agreement for*  
36 *gestational carriers or attorney declarations were not executed in*  
37 *accordance with this section. Upon motion by a party to the*  
38 *~~surrogacy agreement~~ assisted reproduction agreement for*  
39 *gestational carriers, the matter shall be scheduled for hearing*  
40 *before a judgment or order is issued. Nothing in this section shall*

1 be construed to prevent a court from finding and declaring that the  
2 intended parent is or intended parents are the parent or parents of  
3 the child where compliance with this section has not been met;  
4 however, the court shall require sufficient proof entitling the parties  
5 to the relief sought.

6 ~~(f) Upon request by a party to a surrogacy agreement for a~~  
7 ~~petition to establish a parent-child relationship pursuant to this~~  
8 ~~section, the court shall order all pleadings and documents that list~~  
9 ~~the identities of the parties sealed. The request may be made~~  
10 ~~concurrently with the submission of a proposed judgment packet,~~  
11 ~~or upon ex parte application. Documents sealed pursuant to this~~  
12 ~~section shall only be unsealed upon petition to the court with good~~  
13 ~~cause shown.~~

14 *(g) The petition, relinquishment or consent, agreement, order,*  
15 *report to the court from any investigating agency, and any power*  
16 *of attorney and deposition filed in the office of the clerk of the*  
17 *court pursuant to this part shall not be open to inspection by any*  
18 *person other than the parties to the proceeding and their attorneys*  
19 *and the State Department of Social Services, except upon the*  
20 *written authority of a judge of the superior court. A judge of the*  
21 *superior court shall not authorize anyone to inspect the petition,*  
22 *relinquishment or consent, agreement, order, report to the court*  
23 *from any investigating agency, or power of attorney or deposition,*  
24 *or any portion of those documents, except in exceptional*  
25 *circumstances and where necessary. The petitioner may be*  
26 *required to pay the expense of preparing the copies of the*  
27 *documents to be inspected.*

28 *(h) Upon the written request of any party to the proceeding and*  
29 *the order of any judge of the superior court, the clerk of the court*  
30 *shall not provide any documents referred to in subdivision (g) for*  
31 *inspection or copying to any other person, unless the name of the*  
32 *gestational carrier or any information tending to identify the*  
33 *gestational carrier is deleted from the documents or copies thereof.*

34 ~~(g) A surrogacy agreement~~

35 *(i) An assisted reproduction agreement for gestational carriers*  
36 *executed in accordance with this section is presumptively valid*  
37 *and shall not be rescinded or revoked without a court order. For*  
38 *purposes of this part, any failure to comply with the requirements*  
39 *of this section shall rebut the presumption of the validity of the*  
40 *assisted reproduction agreement for gestational carriers.*

1 SEC. 4. No reimbursement is required by this act pursuant to  
2 Section 6 of Article XIII B of the California Constitution because  
3 the only costs that may be incurred by a local agency or school  
4 district will be incurred because this act creates a new crime or  
5 infraction, eliminates a crime or infraction, or changes the penalty  
6 for a crime or infraction, within the meaning of Section 17556 of  
7 the Government Code, or changes the definition of a crime within  
8 the meaning of Section 6 of Article XIII B of the California  
9 Constitution.

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